IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 940 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HAKIMBHAI MIYAUSMAN AKUNJI

Versus

HAJIBHAI KARIMBHAI MANSURI

Appearance:

MR KH KHATWANI for Petitioner

None present for Respondents No. 1, 2

MR SANDIP C SHAH for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/01/2000

ORAL JUDGEMENT

1. Under the impugned order below Ex.5 in M.A.C.P. No. 661 of 1997, the Motor Accidents Claims Tribunal (Aux), Sabarkantha at Himmatnagar rejected the application filed by the petitioner for grant of interim

compensation on the principle of `no fault liability' as per section 140 of the M.V. Act, 1988.

2. Learned counsel for the petitioner relying on the two decisions of this court in the case of New India Assurance Co. Ltd. vs. Mithakhan Dinakhan Notiyar and others reported in 1995 (2) GLR 1111 and in the case of Mahendrakumar kalyanjibhai vs. Harish Vijaychandra Pathak & Ors. reported in 39 (2) GLR 1199 contended that the court in the application filed by the petitioner claimant under section 140 of the M.V. Act has no option except to grant interim compensation. It has next been contended that all the relevant documents have been produced by the petitioner before the Tribunal and the interim compensation has to be awarded to the claimant petitioner by it. Merely because the claimant remained in Hospital for a day or two is hardly any ground to decline to grant interim compensation.

3. On the other hand, learned counsel for the respondent supported this order.

4. Having considered the rival contentions made by the learned counsel for the parties, I do not find any merits in this civil revision application. It is no more res integra that howsoever erroneous findings on facts or law may be unless the matter relates to exercise of jurisdiction of court or some procedural defects or some violation of section or statutory provision, the revision application is not maintainable. Reference in this respect may have to the decision of the Apex Court in the case of D.L.F. Housing vs. Sarup Singh reported in AIR 1971 SC 2324. Otherwise also, in the present case, looking to the treatment given to the petitioner - claimant, the nature of injury that is simple injury, learned Tribunal has not committed any error to reach to the conclusion that it can not be said to be a case where the petitioner can be said to have sustained the injury which resulted into permanent disability. The injury which is sustained by the petitioner - claimant certainly does not fall under section 140 of the M.V. Act, 1988 and the Tribunal was perfectly reasonable and justified not to grant the relief as prayed for by the petitioner - claimant. It is not in dispute that the petitioner - claimant has not produced any X-ray photographs in the proceedings.

5. Otherwise also, in case the order of the learned Tribunal is allowed to stand it will not occasion any failure of justice or will cause any irreparable injury to the petitioner for the reason that if ultimately he

succeeds to make out a case, the court will award final compensation. Interim compensation which is awarded under section 140 of M.V. Act is always subject to deduction from the amount of final compensation. In view of this fact, at this stage, I fail to see any justification in the action of the petitioner to approach to this court. Rather the petitioner should have requested the Tribunal to dispose of the main claim petition finally which is of the year 1997. In a case where the Tribunal declined to grant the interim compensation under section 140 of the M.V. ACt to the claimant it has to make all endeavour to see that the claim petition itself is disposed of. Though on merits, no interference is called for with the impugned order of the Tribunal, the learned Tribunal is directed to decide the claim petition of the petitioner finally within a period of six months from the date of receipt of writ of this order. Compliance of this order has to be reported to this court.

6. The revision application is dismissed accordingly. Rule discharged. In the facts of this case, no order as to costs.

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zgs/-